Supreme Court, U.S.
FILED
MAR 3 1999
CLERK

No. 98-1218

In The

Supreme Court of the United States

October Term, 1998

Gerald Theodore Michaud,

Petitioner,

vs.

State Farm Mutual Automobile Insurance Company,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Although Petitioner Gerald Michaud raises a number of extraneous issues, the only proper questions presented by the Petition for Writ of Certiorari are:

1) Whether this Court should review the determination by the Ninth Circuit Court of Appeals that removal of this action to federal court was proper.

2) Whether this Court should review the determination by the Ninth Circuit Court of Appeals that this case was properly dismissed without prejudice due to Petitioner's refusal to appear before the District Court and failure to obey an order by the District Court.

Respondent State Farm Mutual Automobile Insurance Company objects to the Questions Presented as set forth in the Petition for Writ of Certiorari, as those questions were never properly before the Ninth Circuit Court of Appeals.

LIST OF PARTIES

The parties to the action before the Ninth Circuit Court of Appeals were:

1) Petitioner Gerald T. Michaud ("Michaud").

2) Respondent State Farm Mutual Automobile Insurance Company ("State Farm"). Pursuant to Supreme Court Rule 29.6, Respondent states that State Farm Insurance Companies is the parent of Respondent.

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OPINIONS BELOW

The Judgment and Memorandum Order of the United States Court of Appeals for the Ninth Circuit are unreported and appear in Appendices "A" and "B" respectively. The Judgment and Order of the United States District Court are unreported and appear in Appendices "C" and "D" respectively.

STATEMENT OF JURISDICTION

Petitioner Gerald Michaud has based jurisdiction solely on this Court's authority under 28 U.S.C. § 1254(1) to review cases from the United States Courts of Appeals. Michaud's Petition, however, also apparently attempts to invoke this Court's discretionary power to issue a writ of mandamus, which arises under 28 U.S.C. § 1651(a). Apart from its many technical defects, Michaud's Petition is insufficient to trigger this Court's discretionary power to issue a writ of mandamus because the Petition fails to meet the criteria of United States Supreme Court Rule 20.[1]

[1] Petitioner seeks a writ of mandamus from this Court without properly invoking the Court's jurisdiction under 28 U.S.C. § 1651(a). Michaud's Petition suffers from further defects under United States Supreme Court Rule 20. For example, the Petition's caption does not conform to Rule 20, and Michaud has failed to "set out with particularity why the relief sought is not available in any other court." Supreme Court Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. § 1441 (West 1998) reads, in part, as follows:

Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

28 U.S.C. § 1446 (West 1998) reads, in part, as follows:

Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court, shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon

the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

STATEMENT OF THE CASE

A. Nature of the Case

This action originally arises from Michaud's claims for insurance benefits under an automobile insurance policy issued by State Farm. On April 29, 1994, Michaud contends that he was involved in an automobile accident on the Island of Maui, State of Hawaii ("the accident"). In his Complaint, Michaud alleges that State Farm failed to

provide no-fault benefits which he contends are due and owing to him as a result of the accident. Michaud further contends, *inter alia*, that State Farm failed to properly investigate his claim and have improperly denied payment. (App. "E").

In response, State Farm contends, *inter alia*, that Michaud's policy for his 1975 Mercedes – which was involved in the accident – was properly canceled due to non-payment of premiums. The policy had been canceled approximately four months before the accident.

B. Proceedings Below

This action was initially filed by Michaud on November 7, 1995 in the Circuit Court of the Second Circuit, State of Hawaii ("Second Circuit Court"), docketed as Civil No. 95-0844(1). The Complaint named as defendants State Farm and numerous individual employees of State Farm ("Individual Defendants"). Defendants subsequently brought a Motion To Dismiss Complaint against the Individual Defendants. At a hearing on February 13, 1996, the Second Circuit Court ordered dismissal of the Individual Defendants. The only remaining defendant was State Farm.

On February 15, 1996, State Farm filed a Notice of Removal to the United States District Court for the District of Hawaii ("District Court"), where the case was docketed as Civil No. 96-0155 SPK. Given the dismissal of the Individual Defendants in the Second Circuit Court, there was diversity of citizenship between the remaining parties (Michaud and State Farm), and the case thus

became removable. The case was properly removed pursuant to 28 U.S.C. § 1441 and § 1446. An additional ground for removal was that the Individual Defendants had been fraudulently joined. (App. "F").

On October 15, 1996, the District Court issued an Order Adopting Magistrate's Findings and Recommendations, wherein the Court dismissed the case without prejudice. (App. "D"). On October 17, 1996, the District Court entered Judgment against Michaud. (App. "C").

Michaud appealed the District Court's decision. On July 24, 1998, the United States Court of Appeals for the Ninth Circuit (the "Ninth Circuit") issued its Judgment affirming the District Court's decision. Thereafter, Michaud filed a Petition for Rehearing En Banc, which the Ninth Circuit denied in its Order of November 4, 1998.

C. Statement of Facts

From the very outset, Michaud failed to recognize and respect the authority of the District Court over this matter. Within a month of the removal to the District Court, he filed Plaintiff Gerald T. Michaud's Notice Not To Consent To Proceed Before A United States Magistrate. (App. "G").

In his Scheduling Conference Statement filed April 24, 1996, Michaud ignored the District Court's order of February 15, 1996 to submit a Scheduling Conference Statement which met the requirements of Rule 16 of the Federal Rules of Civil Procedure and Rule 235-3 of the Local Rules of the District Court. Instead, Michaud's Scheduling Conference Statement simply asserted that

the State of Hawaii's Second Circuit Court maintained original jurisdiction in this action. Moreover, Michaud refused to schedule or attend a requisite meeting of the parties, and failed to submit a statement regarding meeting of the parties.

On May 13, 1996, Michaud failed to appear for the Scheduling Conference before Magistrate Francis I. Yamashita. As a result, an Order To Show Cause was issued by Magistrate Yamashita. This Order warned Michaud that failure to respond would result in dismissal of the case. (App. "H").

On May 23, 1996, Michaud submitted Plaintiff Gerald T. Michaud's Response To Order To Show Cause, in which he stated that he is "returning this Honorable Court's Order to Show Cause WITHOUT DISHONOR". (App. "I"). Michaud indicated that he refuted State Farm's authority to remove this case, and instead of addressing the District Court's Order To Show Cause, he demanded certain information from State Farm and the District Court.

On May 28, 1996, Plaintiff Gerald T. Michaud's Demand For Proof Of Jurisdiction was filed. Therein, Michaud asserted that "[t]his Honorable Court through negligence per se is attempting to coerce Plaintiff into its foreign jurisdiction". (App. "J"). State Farm thereafter filed a response memorandum addressing the jurisdictional issues. On July 5, 1996, the District Court issued an Order Denying Plaintiff's Demand For Proof of Jurisdiction. (App. "K"). To address the issues raised by Michaud, the District Court treated Michaud's "Demand" as a Motion To Remand. In its Order, the District Court held

that: 1) the requisite amount in controversy had been met; 2) there is diversity of citizenship; and 3) removal was proper.

Meanwhile, on June 4, 1996, *Michaud failed to appear before the District Court for the second time.* He thus completely ignored and disobeyed the District Court's direct order to appear as set forth in the Order To Show Cause. As a result, on September 3, 1996, the Magistrate issued a Findings And Recommendation, which recommended that "Plaintiff's complaint be dismissed without prejudice for failure to obey a court order." (App. "L").

Notwithstanding the above, Michaud continued to directly challenge the authority and integrity of the District Court. On September 18, 1996, he filed a Notice Of Refusal in which he indicated that he was "REFUSING" briefs submitted by State Farm and the Orders issued by the District Court. (App. "M"). Moreover, he accused the District Court (and defense counsel) of, *inter alia*, deprivation of his rights, extortion, conspiracy against his rights, perjury, false swearing, and fraud.

On October 15, 1996, the District Court issued its Order Adopting Magistrate's Findings And Recommendation. (App. "D"). Thereafter, Michaud filed a "Writ of Error" which the District Court treated as a Notice of Appeal. The appeal went to a panel of three Ninth Circuit Court of Appeals judges ("Ninth Circuit"). The Ninth Circuit concluded that the District Court decision to dismiss was within its discretion given Michaud's repeated noncompliance with court orders and court procedure.

(App. "B"). Upon the Ninth Circuit's decision to affirm, Michaud filed his Petition to this Court.

ARGUMENT

Michaud's Petition appears to both appeal the Ninth Circuit's decision and request a writ of mandamus. *See* Petition at 19-22. Both Michaud's Petition for Writ of Certiorari and Petition for Writ of Mandamus rest upon Michaud's mistaken belief that the proceedings below curtailed his constitutional rights. Neither Petition justifies this honorable Court's review.

United States Supreme Court Rule ("Supreme Court Rule") 10 requires a showing of "compelling reasons" to justify the discretionary grant of a writ of certiorari. Such reasons include, but are not limited to: (1) a conflict of decisions among the federal appellate courts or between a federal appeals court and the highest state court; (2) a significant departure from usual proceedings; or (3) an important question of federal law. Supreme Court Rule 10. Michaud's Petition for Writ of Certiorari fails to raise a "compelling reason" under any of the above categories.

Michaud has cloaked his fundamentally flawed Petition under an array of constitutional attacks on the federal judicial system. These attacks stem from Michaud's belief that the legitimate procedures strictly followed by the District Court and the Ninth Circuit somehow violated his constitutional rights. *See* Petition at 2-3. Notwithstanding Michaud's insistence to the contrary, the procedures below were correctly applied in this case and in no way threatened Michaud's constitutional rights.

The lower courts conducted themselves with diligence and forbearance.

Due to his frustration with not only the court system but also federal and state agencies, Michaud also seeks a writ of mandamus and names numerous additional "parties" in his Petition who are not truly parties to this action. Under Supreme Court Rule 20, this Court has the power to issue the extraordinary remedy of mandamus only in the most exceptional cases. Certainly this Petition does not qualify as such a case where Petitioner Michaud has alternative remedies available to him and his reasons for seeking the Petition are based on his misunderstanding of both the law and court procedure.

A. The Instant Petition Fails To Raise A Compelling Reason To Justify A Writ Of Certiorari And, Therefore, Should Be Denied.

Petitioner Michaud's arguments express a belief that the lower courts' procedures denied him his "day-in-court." *See* Petition at 2-3. This belief obviously results from Michaud's unfamiliarity with court procedure.

To the extent that Michaud's lack of experience with judicial procedures has led him to question the constitutionality of the proceedings below, his Petition is untenable. From the initial removal of the case to federal court through the Ninth Circuit's affirmance of the District Court's dismissal, the lower courts have followed, without deviation, the rules of civil and appellate procedure, which are presumptively constitutional. 1 Moore's Federal Practice 3d § 1.05 (1998) (quoting *Business Guides, Inc. v. Chromatic Enters., Inc.*, 498 U.S. 533, 552-3, 111 S. Ct.

922, 112 L.Ed. 2d 1140 (1991)). For the reasons set forth below, the instant Petition for Writ of Certiorari should be denied.

1. The Removal Of The Instant Action To The Federal District Court Proceeded Under Both Statutory And Constitutional Authority.

Michaud has no legitimate basis to challenge federal jurisdiction over the instant action. Even though Michaud originally filed his Complaint in the Second Circuit Court of the State of Hawaii, once the State Court dismissed the nondiverse defendants, State Farm properly sought removal to the federal District Court on the basis of diversity of citizenship. This Court has already determined that a plaintiff who opposes removal of a case from a state court to a federal district court errs in relying on the principle that a plaintiff, as master of the complaint, can choose to have the cause heard in state court. *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 118 S. Ct. 523, 139 L.Ed. 2d 525 (1997). By filing a claim against a diverse party, Michaud subjected himself to the possibility that State Farm would exercise its right to remove the case to the federal court.

Removal is specifically authorized pursuant to 28 U.S.C. § 1441, which states in pertinent part:

> any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division

> embracing the place where such action is pending.

At the time this action was removed, pursuant to 28 U.S.C. § 1332, the District Court had original jurisdiction over civil actions where the matter in controversy exceeded $50,000 and was between citizens of different states. Once the State Court dismissed the Individual Defendants named in Michaud's Complaint, there was diversity of citizenship between the remaining parties (State Farm and Michaud) and the action became removable. State Farm timely removed the action within 30 days of it becoming removable.[2] 28 U.S.C. § 1446(b) (1994).

Federal courts have long recognized the "validity of such congressional acts. . . . authorizing the removal of suits of a civil nature from state to federal court for diversity of citizenship." *Kithcart v. Metropolitan Life Ins. Co.*, 150 F.2d 997, 1001 (8th Cir. 1945) (citing *Gaines v. Fuentes*, 92 U.S. 10, 18, 23 L.Ed. 524 (1875)). A foreign corporation has a constitutional right to resort to the federal courts, and removal, where the federal court has original jurisdiction over the case, is a proper means of exercising this right. *See Terral v. Burke Constr. Co.*, 257 U.S. 529, 42 S. Ct. 188, 66 L.Ed. 352 (1922) (holding unconstitutional state action curtailing a foreign corporation's constitutional right to resort to the federal courts).

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[2] Upon Michaud's demand for proof of jurisdiction, the District Court reviewed the propriety of federal jurisdiction over this matter and found that the District Court "ha[d] original jurisdiction under diversity of citizenship[.]" (App. "K"). In its order, the District Court confirmed the propriety of removal under 28 U.S.C. § 1332 and § 1441.

Accordingly, State Farm merely exercised its right to resort to the District Court under diversity jurisdiction.

In an Eighth Circuit case factually similar to the instant action, an insured brought suit against the insurer in state court. *Kithcart*, 150 F.2d 997. The insurer removed the case to federal court on diversity of citizenship grounds. *Id.* In his appeal, the insured argued that the removal statutes were unconstitutional. *Id.* at 1001. After surveying the history and purpose of removal statutes, the court concluded that "[t]he validity of [the removal statutes]. . . . is not open to serious question, and the provisions adopted have been recognized and followed with scarcely an exception by the Federal and State courts since the establishment of the government." *Id.* The court, therefore, rejected the insured's claim that the removal statutes abridged his constitutional rights. *Id.*

Likewise, Michaud's Petition fails to raise any serious constitutional attack on the removal procedures applied by the lower court. Michaud filed his Complaint in the State Court, but by naming a diverse defendant, he subjected himself to the possibility that State Farm would avail itself of federal jurisdiction once the non-diverse parties were dismissed. Upon review, the District Court found that the requirements for diversity had been met and that removal was proper. The Ninth Circuit affirmed the District Court's decision. This Court need not grant Michaud's Petition only to reaffirm the legitimacy of the removal procedure, which is historically unchallenged and widely recognized as valid.

2. Michaud's Intentional Refusal To Cooperate With The District Court's Orders Prompted The Dismissal Of The Instant Action.

Even after the District Court determined federal jurisdiction to be proper, Michaud continued to refuse to participate in the District Court proceedings. A district court has discretion to dismiss claims "for failure to prosecute or to comply with a court order or any federal rule." 8 Moore's Federal Practice § 41.50. Indeed, Rule 41(b) of the Federal Rules of Civil Procedure ("FRCP") authorizes involuntary dismissals under such circumstances. Additionally, FRCP, Rules 16(f) and 37(b) specifically permit dismissal for failure to comply with discovery rules.

Michaud's consistent noncompliance and blatant disobedience during the lower court proceedings justified the District Court's decision to dismiss under any of the above rules. Michaud disobeyed the local and federal rules requiring a prehearing meeting by refusing to meet with State Farm's counsel. Michaud further refused to submit a proper scheduling conference statement. He knowingly disregarded the authority of the District Court by failing to comply with two court orders and to appear at hearings after being warned by the court that failure to appear would result in dismissal.

In Magistrate Judge Yamashita's Findings and Recommendation of September 3, 1996, he specifically held that Michaud had *twice* failed to appear for hearings after being ordered to do so (once on May 13, 1996 and once on June 19, 1996). Magistrate Yamashita further found that

"Plaintiff . . . fail[ed] to articulate a legitimate reason for not complying with court orders," and that "Plaintiff's failure to appear at . . . the order to show cause hearing is inexcusable." (App. "L"). Clearly, Michaud's persistent disregard for the District Court's authority compelled a dismissal.

3. The Ninth Circuit Properly Affirmed The District Court's Decision To Dismiss.

The Ninth Circuit followed proper appellate procedure in its review of the District Court's decision to dismiss. Indeed, Michaud's somewhat incoherent contentions in his Petition fail to raise any legitimate points of error.[3]

Upon the filing of Michaud's "Writ of Error," which the District Court treated as a Notice of Appeal, the Ninth Circuit exercised its appellate jurisdiction under 28 U.S.C. § 1291. Section 1291 provides that the Court of Appeals shall have jurisdiction of appeals from final decisions of the District Courts. The Panel of three judges reviewed the appeal according to the Ninth Circuit's usual practice. The Ninth Circuit reviewed the appeal without oral argument. Under the authority of Federal Rules of Appellate

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[3] Michaud contends, among other things, that "the Ninth [Circuit] summarily and arbitrarily denied . . . Writ without, as a minimum, a hearing, when a fair trial in a fair tribunal is a basic requirement of due process." Petition at 2. He also accuses the Ninth Circuit Panel of "bias" and of "depart[ing] from the accepted and usual course of judicial proceedings." *Id.*

Procedures, ("FRAP"), Rule 34, the Ninth Circuit determined oral argument to be unnecessary. The Ninth Circuit notified the parties of its decision and invited statements in opposition as required under FRAP 34 and Circuit Rule 34-4. (App. "N").

Pursuant to clearly established law, the Ninth Circuit Court properly reviewed the District Court's dismissal under the abuse of discretion standard. *See Toth v. Transworld Airlines, Inc.*, 862 F.2d 1381 (9th Cir. 1988). In its Memorandum, the Ninth Circuit Court declared that:

> [t]he district court did not abuse its discretion by dismissing the complaint for failure to comply with a court order, where Michaud failed to appear at two pretrial conferences and, after being warned that he risked dismissal, failed to provide an adequate response to, or appear at a hearing as ordered in, the district court's order to show cause for his failure to appear at the first conference.

(App. "B"). Similar to most appellate courts, the Ninth Circuit affirmed the decision to dismiss without prejudice as within the District Court's discretion. 8 Moore's Federal Practice § 41.53. Michaud requested a rehearing en banc, but his request was denied. Generally, a hearing or rehearing en banc is not favored and "ordinarily will not be ordered[.]" FRAP 35.

Far from arbitrary, the Ninth Circuit's decision reflects a reasoned and careful review of the circumstances surrounding the District Court's dismissal and the case law supporting its decision. The Ninth Circuit's strict adherence to case law and the rules of procedure

defeats Michaud's claims of bias and renders his Petition frivolous.

Michaud has apparently filed his Petition for Writ of Certiorari due to a misunderstanding of judicial procedures. The lower courts did not deviate from the usual course of proceedings, except perhaps to the extent that they tried to accommodate Michaud as a pro se litigant. Neither have the lower courts infringed on any of Michaud's constitutional rights. Michaud's Petition does not rely on an accurate understanding of court practice, but rather on ill-informed expectations. Such misconceptions of law and fact do not give rise to the compelling reasons justifying a writ of certiorari from this honorable Court. Michaud's petition for Writ of Certiorari should, therefore, be denied.

B. The Instant Petition Clearly Fails To Support The Exceptional Issuance Of A Writ Of Mandamus.

A writ of mandamus falls within this Court's discretionary power to issue an extraordinary writ under 28 U.S.C. § 1651(a) and Rule 20 of the Rules of the United States Supreme Court. Such extraordinary relief, however, "must be reserved for only truly extraordinary cases." 23 Moore's Federal Practice § 520.02. A petition for an extraordinary writ must meet certain prerequisites specified in Supreme Court Rule 20. *Id.*

Such a petition must show that: (1) the writ will be in aid of the Court's appellate jurisdiction; (2) exceptional circumstances warrant the exercise of the Court's discretionary powers; (3) adequate relief cannot be had in any

other form, and (4) adequate relief cannot be had from any other court. *Id.* Michaud's Petition satisfies none of these prerequisites.

As shown above, Michaud's petition is wholly without merit. The federal court judges have proceeded in accordance with normal court procedure, respecting both the court rules and Michaud's status as a pro se litigant. Indeed, it is apparent that the federal courts have gone out of their way to accommodate Michaud.

As for Michaud's assertions against various Federal and State government officials, such claims exceed the scope of the lower court proceedings. These government officials have not been involved in the lower court proceedings and should not be considered parties in interest. Michaud appears to have included these parties out of his misunderstanding of federal court jurisdiction and not because of any misconduct on their behalf.

In this respect, Michaud's Petition can be of no aid to this Court's appellate jurisdiction as there has been no error committed. Similarly, the faulty logic behind this Petition does not present any exceptional circumstance of a kind to warrant an extraordinary writ. *See In Re Michael Sindram*, 498 U.S. 177, 179, 11 S. Ct. 269, 112 L.Ed. 2d 599 (1991) (finding that petitioner failed to identify "drastic circumstance to justify extraordinary relief" as required by Supreme Court Rule 20.1); *Will v. United States*, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L.Ed. 2d 305 (1967) (stating that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy").

Moreover, Michaud has sought an extraordinary writ where alternative relief is available. "[S]uch remedies should be resorted to only where appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260, 67 S. Ct. 1558, 91 L.Ed. 2041 (1947). "It is well settled that where a party had the right to a writ of error or appeal, resort may not be had to the extraordinary writ of mandamus[.]" *Ex parte Tiffany*, 252 U.S. 32, 37, 40 S. Ct. 239, 64 L.Ed. 445 (1920). Michaud's appeal to this Court from the Ninth Circuit's decision addresses the same concerns as those raised in his Petition for a Writ of Mandamus. "[I]f the complaining party has an adequate remedy[,]. . . . the writ will ordinarily be denied." *Ex parte Chicago, R.I. & Pac. Ry.*, 255 U.S. 273, 41 S. Ct. 288, 65 L.Ed. 631 (1921). Michaud's ability to raise the instant appeal to this Court defeats his request for a Writ of Mandamus. Michaud's Petition has failed to meet all four prerequisites to the issuance of an extraordinary writ. This Court, therefore, should deny his Petition.

CONCLUSION

Michaud has persisted in his unjustified rejection of federal jurisdiction over the instant case, despite the clear mandate of the law and federal court practice. His insistence has forced the federal judiciary and State Farm to expend a great deal of resources in addressing his unfounded objections and appeals. Michaud now asks this Court to review the Ninth Circuit's decision and further requests a writ of mandamus against various government officials and agencies without any legitimate grounds for doing so. The proceedings below were lawful

and in accordance with valid procedural rules. The instant Petition, therefore, fails to justify consideration of a writ of certiorari or a writ of mandamus. For the foregoing reasons, State Farm respectfully requests that this honorable Court deny Michaud's Petitions for Writ of Certiorari and for Writ of Mandamus.

Dated: Honolulu, Hawaii, March 3, 1999.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 96-17212
CT/AG#: CV-96-00155-SPK

GERALD T. MICHAUD

Plaintiff – Appellant

v.

STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT; JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive; CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive

Defendants – Appellees

NO. 97-15387
CT/AG#: CV-96-00155-SPK

GERALD T. MICHAUD

Plaintiff – Appellee

v.

STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT

Defendants – Appellants

JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive; CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive

Defendants

APPEAL FROM the United States District Court for the District of Hawaii (Honolulu).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii (Honolulu) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered – 7/24/98.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GERALD T. MICHAUD, Plaintiff-Appellant, vs. STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT; JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive; CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive, Defendants-Appellees.	NO. 96-17212 D.C. No. CV-96-00155-SPK
GERALD T. MICHAUD, Plaintiff-Appellee, vs. STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT, Defendants-Appellants	No. 97-15387 D.C. No. CV-96-00155-SPK

JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive, CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive, Defendants.	) MEMORANDUM[1]

Appeal from the United States District Court
District of Hawaii
Samuel P. King, Senior Judge, Presiding
Submitted July 20, 1998[2]

Before: HUG, Chief Judge; SCHROEDER and KOZINSKI, Circuit Judges.

Gerald T. Michaud appeals pro se the district court's dismissal without prejudice of his action against State Farm Mutual Insurance Company and others.

State Farm cross-appeals, asserting the dismissal should have been with prejudice. We affirm.

The district court did not abuse its discretion by dismissing the complaint for failure to comply with a court order, where Michaud failed to appear at two pre-trial conferences and, after being warned that he risked dismissal, failed to provide an adequate response to, or

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

appear at a hearing as ordered in, the district court's order to show cause for his failure to appear at the first conference. *See Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1385 (9th Cir. 1988) (dismissal for failure to comply with court order reviewed for abuse of discretion).

With regard to State Farm's cross-appeal, we cannot say that the district court's decision to dismiss without prejudice, rather than with prejudice, constituted an abuse of discretion. *See generally Hernandez v. City of El Monte*, 138 F.3d 393, 402 (9th Cir. 1998) (noting considerations which make dismissal with prejudice more difficult to justify than dismissal without prejudice). The judgment, accordingly, is

AFFIRMED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.

JUDGMENT IN A CIVIL CASE

Case Number:
CIVIL 96-00155SPK

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that this case is DISMISSED Without Prejudice.

cc: all counsel

OCTOBER 17, 1996
Date

WALTER A.Y.H. CHINN
Clerk

/s/ Walter A.Y.H. Chinn
(By) Deputy Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al., Defendants.	)	CIVIL NO. 96-00155 SPK ORDER

ORDER ADOPTING MAGISTRATE'S FINDINGS AND RECOMMENDATION

On November 7, 1995, Plaintiff pro se Gerald T. Michaud ("Michaud") filed a complaint in the Circuit Court of the Second Circuit State of Hawaii against Defendant State Farm Automobile Insurance Company ("State Farm"). State Farm filed a Notice of Removal on February 15, 1996. Michaud filed a "Response" to the Notice of Removal on March 8, 1996. Michaud neither filed a motion nor made an informal request in his "Response" to remand the case back to the Second Circuit Court. Michaud did not argue that the Notice of Removal was procedurally defective. Michaud's argument was that the Notice violated Rule 11 of the Federal Rules of Civil Procedure. He informally suggested that the court *sue sponte* impose sanctions against State Farm. The court did not impose any Rule 11 sanctions.

By order dated February 15, 1996, the court set a Rule 16 pretrial conference with Magistrate Judge Francis Yamashita for May 13, 1996. Michaud failed to appear at the May 13 conference and failed to file a meeting of the parties statement as required by Local Rule 230-1(d). On May 15, 1996 the court rescheduled the conference to June 4, 1996, ordering Michaud to appear and to show cause for failure to appear at the May 13 conference. The order warned that failure to respond would result in dismissal of the case. On May 23, 1996, Michaud filed a response to the court's order to show cause, stated that he "refutes the validity of Defendant's authority to remove this suit from state court," and requested the court to "remand this matter for probable cause." Michaud returned his copy of the order to show cause and did not appear at the June 4 conference. The court has not been able to issue a trial schedule because Michaud has not appeared at the pretrial conferences.

Magistrate Judge Yamashita issued Findings and Recommendation on September 3, 1996 for the issue of Michaud's failure to attend the pretrial conferences. The Magistrate found that Michaud's failure to attend the conferences was an inexcusable violation of a court order and recommended that this court dismiss the action without prejudice. Michaud filed a Memorandum in Response to Findings and Recommendation on September 9, 1996. Michaud made twenty-two arguments in response to the Findings and Recommendation. The arguments allege defects in the removal procedure and challenge the court's jurisdiction in this matter, but otherwise do not offer any explanation for his failure to attend the conferences.

II. STANDARD OF REVIEW

This court reviews *de novo* a Magistrate's dispositive proposed orders, findings, or recommendations. Local Rule 404-2.

III. DISCUSSION

Michaud alleges a number of procedural defects in State Farm's removal of the action to this court. Statute provides that:

> A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

28 U.S.C. 1447(c). State Farm filed notice of removal on February 15, 1996. The deadline for Michaud to file a motion to remand the case based on defects in the removal process passed in March. Michaud did not raise any arguments alleging specific procedural defects until more than five months after the deadline when he filed his memorandum in response to the Magistrate's Findings and Recommendation on September 9, 1996.

The record shows that Michaud first contested State Farm's authority to remove the case in his May 23 memorandum. May 23 was still well beyond the deadline to raise procedural defects in removal, but even then, Michaud's argument against removal was based on lack of subject matter jurisdiction rather than procedural defects. Michaud filed a "Demand for Proof of Jurisdiction" on

May 28, 1996. The court interpreted this document as a Motion to Remand for Lack of Subject Matter Jurisdiction. The court denied the motion/demand on July 5, 1996.

Michaud's procedural arguments challenging removal to this court are not timely. However, a litigant may raise the issue of whether the court has subject matter jurisdiction at any time. The statute directs the district court to remand the case back to the state court if it appears at *any time* before final judgment that the federal court lacks subject matter jurisdiction. *Id.* (emphasis added). Upon review of Michaud's arguments, the court concludes for the same reasons explained in its July 5 order that there is proper subject matter jurisdiction in this case based on diversity of citizenship.

Having concluded that the court has jurisdiction over this matter, the court turns to the Magistrate's Findings and Recommendation. This court may dismiss an action under Rules 16(f), 37(b), or 41(b) for failure to comply with court rules or court orders. *See Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 650 (9th Cir. 1991). A [sic] involuntary dismissal may be with or without prejudice. *Johnson v. U.S. Department of the Treasury*, 939 F.2d 820, 825 (9th Cir. 1991). The court should afford the litigant prior notice of its intention to dismiss. *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), *cert. denied* 488 U.S. 819 (1988). The sanction of dismissal without prejudice is appropriate when a pro se litigant refuses to obey a Magistrate's orders in face of warnings that such conduct could result in dismissal of the case. *See, e.g., Dukes v. New York City Police Com'r Ward*, 129 F.R.D. 478 (S.D.N.Y. 1990).

The court agrees with the Magistrate's conclusion that Michaud failed to articulate a legitimate reason for failing to comply with a court order. The court warned Michaud that failure to comply would result in dismissal of his case. Accordingly, this court ADOPTS the Magistrate's Findings and Recommendation and DISMISSES the case without prejudice.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, October 15, 1996.

/s/ Samuel P. King
SAMUEL P. KING
United States District Judge

APPENDIX E

GERALD T. MICHAUD, Sui juris
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Telephone: (808) 669-0887

In Propria Persona

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH AND MONIQUE CATCOTT; JOHN DOES 1-10; JANE DOES 1-10; PARTNERSHIP DOES 1-10; GOVERNMENTAL ENTITY DOES 1-10, inclusive, Defendants.	CIVIL NO. 95-0844 (1) COMPLAINT; AFFIDAVIT OF GERALD T. MICHAUD; EXHIBITS A-B; DEMAND FOR JURY TRIAL; SUMMONS

COMPLAINT

COMES NOW Plaintiff Gerald T. Michaud, hereinafter "Plaintiff" and for causes of action against Defendants

above named, only, for breach of the duty of good faith and fair dealing, allege and aver as follows:

COUNT I

1. Plaintiff Gerald T. Michaud was at all relevant times herein mentioned, a resident of the County of Maui, State of Hawaii.

2. Defendant STATE FARM INSURANCE COMPANIES (hereinafter STATE FARM) is, and was at all relevant times herein mentioned, upon information and belief, an Illinois corporation authorized to, and doing business in the State of Hawaii including the County of Maui.

3. That the true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10 are sued herein under their fictitious names and identities and are presently unknown to Plaintiff, and their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff despite diligent efforts to determine same, but said DOE defendants are in some manner proximately responsible for the events and happenings herein referred to, and legally caused injury and damages proximately thereby to Plaintiff as herein alleged.

4. That at all times herein mentioned, Defendants, and each of them, were the agents and employees of each of the remaining Defendants, and were at all times acting

within the purpose and scope of said agency and employment, and each Defendant has ratified and approved the acts of his agent.

5. Prior to November 2, 1989, Defendant STATE FARM issued to Plaintiff Gerald T. Michaud a No-Fault Automobile insurance Policy No. S12 4235-D23-51A which insured a certain vehicle belong [sic] to Plaintiff. A copy of said Policy is marked as Exhibit "A," attached hereto, and incorporated herein by reference. Said Automobile insurance Policy was entered into by Plaintiff within the jurisdiction of the above-entitled Court and required the payment of benefits within the jurisdiction of the above-entitled Court for a total amount to be shown at the time of trial. The policy extended to plaintiff no-fault benefits which insured a certain vehicle belonging to Plaintiff.

6. Plaintiff has paid all premiums due under said Automobile Insurance Policy to Defendant STATE FARM at all relevant times herein and has performed all obligations under said Automobile Insurance Policy on Plaintiffs' part to be performed.

7. On or about April 29, 1994, while Plaintiff was driving his vehicle southbound in the southbound lane of Piilani Highway, a northbound vehicle crossed over the center lane into the center of the southbound lane and negligently, carelessly and/or recklessly collided with the vehicle driven by Plaintiff. Plaintiff suffered a loss compensable under the terms of said Automobile Insurance Policy in that Plaintiff sustained serious bodily injury.

8. Plaintiffs' accident occurred out of the operation and use of the said vehicle insured by Defendant STATE FARM.

9. On or about May 19, 1994, upon release from Queen's Hospital, Plaintiff filed a claim for insurance benefits under said Automobile Insurance Policy due to Plaintiffs' serious bodily injuries.

10. All acts complained herein occurred within the jurisdiction of the Circuit Court of the Second Circuit, State of Hawaii.

11. As a result of the above-mentioned accident, Plaintiff sustained serious and permanent bodily and psychological injury, loss of income, medical expenses and severe emotional distress and mental suffering.

12. That at the time of the above-referenced accident, the above-described automobile insurance policy issued by Defendant STATE FARM was in full force and effect.

13. In due course, Plaintiff submitted his respective applications for no-fault benefits to Defendant STATE FARM.

14. Despite overwhelming evidence that Plaintiff was entitled to no-fault benefits, Defendant STATE FARM failed and refused to provide the no-fault benefits due to Plaintiff pursuant to Plaintiffs' policy of insurance.

15. Despite Plaintiffs' continued demands for benefits and Plaintiffs' request for information regarding the basis for Defendant STATE FARM'S denial, Defendant STATE FARM continues to refuse to provide no-fault benefits to Plaintiff and refuses to provide Plaintiff with

any factual information, or legitimate documentation supporting or otherwise explaining the denial.

16. In disregard of its duties and obligations to Plaintiff, Defendant STATE FARM, among other things, failed to adequately investigate Plaintiffs' claims for no-fault benefits as is its obligation, consciously and/or negligently disregarded and breached its duties and obligations to provide no-fault benefits to Plaintiff, and took actions which were intended only to financially benefit Defendant STATE FARM.

17. Defendant's actions in denying Plaintiffs claims were done wantonly, oppressively, and with such malice as implies a spirit of mischief or criminal indifference to their civil obligations to Plaintiff, and indicated a conscious indifference to the consequences of their actions, and therefore Defendant STATE FARM has breached its duty of good faith and fair dealing owed to Plaintiff in the following respects:

(a) Failure to make insurance benefit payments to Plaintiff at a time when Defendants knew that Plaintiff was entitled to said payments under the terms of said No-Fault Package Policy.

On or about May 19, 1994, Plaintiff submitted a claim to Defendant STATE FARM for the losses due to the accident. There was a substantial delay in investigating Plaintiffs' claim, as different individuals were assigned to verify "check payments" made by Plaintiff, during which time Plaintiff was unable to receive the proper medical treatment needed for his serious injuries. Thereafter, Defendant STATE FARM refused to pay plaintiff any

benefits to which he was entitled, contending that Plaintiffs' Policy was canceled for non-payment of premium. Plaintiff disputed Defendant STATE FARM'S determination and requested a reconsideration of the denial with the aid of the State of Hawaii, Insurance Division, Department of Commerce and Consumer Affairs, hereinafter DEPARTMENT. Defendant STATE FARM again denied Plaintiffs' claim by furnishing the DEPARTMENT and Plaintiff with falsified documents (copies of said documents are marked as Exhibit "B"), and such denial has continued through the present time;

(b) Delaying payments to Plaintiff knowing Plaintiffs' claim for benefits under said Hawaii No-Fault Automobile Insurance Package Policy to be valid for the reasons stated above;

(c) Misrepresenting to Plaintiff pertinent facts relating to Hawaii no-fault automobile insurance rules pertaining to cancellation procedures, at a time when Defendant knew that such representations were false;

(d) Failure to reasonably and promptly investigate and process Plaintiffs' claim for the reasons stated above;

(e) Not attempting in good faith to effectuate a prompt, fair and equitable settlement of plaintiffs' claim for damage in which liability has become reasonably clear for the reasons stated above;

(f) Failure to provide a reasonable explanation of the basis relied upon in the Hawaii Revised Statutes concerning "cancellation notices," in relation to the applicable facts, for the denial of Plaintiffs' claim for the

reasons stated above, as well as Defendant's language as used in the denials was positively vague and ambiguous and is insufficient to justify refusal to pay the disputed no-fault benefits;

(g) Plaintiff is informed and believes and thereon allege [sic] that Defendant STATE FARM has breached its duty of fair dealing and good faith owed to Plaintiff by other acts or omissions of which Plaintiff is presently unaware. Plaintiff will seek leave of Court to amend this Complaint at such time as Plaintiff discovers the other acts or omissions of said Defendant constituting such breach.

18. Defendants' conduct described herein was intended by the defendants to cause injury to the Plaintiff or was carried on by the defendants with a conscious disregard of the rights of Plaintiff, subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, and was an intentional misrepresentation, deceit, or concealment of a material fact known to the Defendants with the intention to deprive Plaintiff of legal rights or to otherwise cause injury, such as to constitute malice oppression or fraud under Hawaii Revised Statutes § 480-2, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or set an example of Defendants.

19. Defendants' conduct described herein was undertaken by officers or managing agents of the corporate Defendant, STATE FARM, identified herein as ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10,

AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive, who were managing agents of Defendant, STATE FARM, responsible for claims operations and/or decisions. The aforesaid described conduct of ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and said DOE individuals was therefore undertaken on behalf of the corporate defendant, STATE FARM. Said corporate Defendant further had advance knowledge of the actions and conduct of ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and said DOE individuals whose actions and conduct were ratified, authorized, and approved by corporate officers, directors or managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated as JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive.

20. Defendant STATE FARM'S actions and omissions as alleged herein were part of Defendant STATE FARM'S company policy and claims practice designed to utilize Defendant STATE FARM'S superior financial strength and/or large insurance market share in order to intimidate the injured victim in his time of need to do without and/or accept less than what is due him, all of which is in disregard of Defendant STATE FARM'S duties and obligations as an insurer to its insured.

21. As a proximate result of the aforementioned wrongful conduct of Defendants, Plaintiff has suffered, and will continue to suffer in the future, damages plus

interest, for a total amount to be shown at the time of trial.

22. As a further proximate result of the aforementioned wrongful conduct of Defendants, Plaintiff has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out-of-pocket expenses, all to Plaintiffs' general damage in an amount to be shown according to proof at the time of trial.

23. The aforestated actions and omissions constitute unfair claim settlement practices as set forth in H.R.S. § 431:13-103(a)(10).

24. The above alleged actions and omissions proximately caused Plaintiff damages for which he seeks general, special, consequential, compensatory, treble, and punitive damages as set forth below.

COUNT II

25. Plaintiff reallege [sic] the allegations contained in Paragraphs 1 through 24 above and incorporate same by reference as though fully set forth herein.

26. Defendant STATE FARM'S wrongful failure to provide no-fault benefits constitutes an express and/or implied breach of insurance contract for which plaintiff seeks damages as herein set forth.

COUNT III

27. Plaintiff reallege [sic] the allegations contained in Paragraphs 1-26 above and incorporate same by reference as though fully set forth herein.

28. The aforesaid acts and omissions of said Defendants constitute negligent claims practices for which Plaintiff seeks damages as herein set forth.

COUNT IV

29. Plaintiff reallege [sic] the allegations contained in Paragraphs 1-28 above and incorporate same by reference as though fully set forth herein.

30. Defendants ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSPS [sic] 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive, and each of them, are employees and agents of Defendant STATE FARM who were responsible for processing Plaintiffs' claim for benefits under the No-Fault Automobile Insurance Package Policy which is the subject matter of this action, and Defendant STATE FARM authorized, directed and ratified the acts of said Defendant employees and agents herein.

31. Defendants ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive, and each of them, as individuals and entities engaged in the business of insurance in Hawaii, are, and at all times herein mentioned were, members of the class of persons and entities intended to be regulated and in fact regulated by Hawaii Insurance Code sections 431:13-102, and 431:13-103.

32. Plaintiff, as an insured under a No-Fault Automobile Insurance Package Policy with Defendant STATE FARM, is, and at all times herein mentioned was, a member of the class of persons sought to be protected by *Hawaii Insurance Code* sections 431:13-102, and 431:13-103.

33. By the aforesaid acts and omissions as alleged herein, Defendants, and each of them, have violated their statutory duties set forth in *Hawaii Insurance Code* sections 431:13-103 in the following particulars:

Committing or performing with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue [Ins. Code § 431:13-103(10)(A)];

(b) Failing to acknowledge and act reasonably promptly upon communications from Plaintiff with respect to the claim arising under said No-Fault Automobile Insurance Package Policy [Ins. Code § 431:13-103(10)(B)(iii)];

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims such as Plaintiffs' herein arising under said No-Fault Automobile Insurance Package Policy [Ins. Code § 431:13-103(10)(C)];

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information such as Plaintiffs' herein arising under said No-Fault Automobile Insurance Package Policy [Ins. Code § 431:13-103(10)(D)];

(e) Failing to affirm or deny Plaintiffs' coverage of claims within a reasonable time after proof of

loss statements have been completed, [Ins. Code § 431:13-103(10)(E)];

(f) Failing to provide the insured, such as Plaintiff, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported [Ins. Code § 431:13-103(10)(G)];

(g) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of Plaintiffs' claims in which liability has become reasonably clear [Ins. Code § 431:13-103(10)(H)];

(h) Compelling Plaintiff to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds [Ins. Code § 431:13-103(10)(1)];

(i) Attempting to settle Plaintiffs' claim for less than the amount to which a reasonable person, would have believed the Plaintiff was entitled by reference to written or printed advertising material accompanying or made part of an application given Plaintiff [Ins. Code § 431 :13-103(10)(J)];

(j) Attempting to settle Plaintiffs' claims on the basis of an application which was altered without notice, or knowledge or consent of the Plaintiff [Ins. Code § 431:13-103(10)(K)];

(k) Failing to promptly provide a reasonable explanation of the basis relied on in the No-Fault Automobile Insurance Package Policy, in relation to the

applicable facts and law, for the denial of Plaintiffs' claim [Ins. Code § 431:13-103(10)(P)].

34. As a proximate result of the Defendants' breach of their statutory duties as herein alleged, Plaintiff has suffered damages under the terms of the No-Fault Automobile Insurance Package Policy involved herein, plus interest, and for anxiety, worry, mental and emotional distress, and other incidental damages as alleged herein.

35. Defendants' conduct described herein was intended by the Defendants to cause injury to the Plaintiff or was carried on by the Defendants with a conscious disregard of the rights of Plaintiff, subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, and was an intentional misrepresentation, deceit, or concealment of a material fact known to the Defendants with the intention to deprive Plaintiff of property, legal rights or to otherwise cause injury, such as to constitute malice oppression or fraud under Hawaii Revised Statutes § 480-2, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or set an example of Defendants.

36. Defendants' conduct described herein was undertaken by officers or managing agents of the corporate Defendant, STATE FARM, identified herein as ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREDIA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive, who were managing agents of Defendant, STATE FARM, responsible for claims operations and/or decisions. The

aforedescribed conduct of ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and said DOE individuals was therefore undertaken on behalf of the corporate Defendant, STATE FARM. Said corporate Defendant further had advance knowledge of the actions and conduct of ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH, MONIQUE CATCOTT, and said DOE individuals whose actions and conduct were ratified, authorized, and approved by corporate officers, directors or managing agents whose precise identities are unknown to plaintiff at this time and are therefore identified and designated herein as JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, AND DOE GOVERNMENTAL ENTITIES 1-10, inclusive.

37. Defendant STATE FARM breached the implied and/or expressed covenant of good faith and fair dealing and willfully and/or wantonly and/or intentionally and/or in bad faith breached the insurance contract for which Plaintiff seeks damages as herein set forth.

COUNT V

38. Plaintiff reallege the allegations contained in Paragraphs 1-37 above and incorporate same by reference as though fully set forth herein.

39. The aforesaid acts and omissions of said Defendant STATE FARM constitutes the tort of Bad Faith for which Plaintiff seeks damages as herein set forth.

COUNT VI

40. Plaintiff reallege the allegations contained in Paragraphs 1-39 above and incorporate same by reference as though fully set forth herein.

41. The aforesaid acts and omissions of Defendant STATE FARM were unlawful, unfair, and deceptive and thus violative of Hawaii Revised Statutes § 480-2 for which Plaintiff seeks damages as provided by Hawaii Revised Statutes § 480-13.

COUNT VII

42. Plaintiff reallege the allegations contained in Paragraphs 1-41 above and incorporate same by reference as though fully set forth herein.

43. The aforesaid acts and omissions of Defendant STATE FARM constitute outrageous tortious conduct for which Plaintiff seeks damages as herein set forth.

COUNT VIII

44. Plaintiff reallege the allegations contained in Paragraphs 1-43 above and incorporate same by reference as though fully set forth herein.

45. The aforesaid acts and omissions of Defendant STATE FARM constitutes the intentional and/or negligent infliction of emotional distress for which Plaintiff seeks damages as herein set forth.

COUNT IX

46. Plaintiff reallege the allegations contained in Paragraphs 1-45 above and incorporate same by reference as though fully set forth herein.

47. The aforestated conduct and omissions of Defendant STATE FARM constitute intentional and/or negligent misrepresentation for which Plaintiff seeks damages as herein set forth.

COUNT X

48. Plaintiff reallege the allegations contained in Paragraphs 1-47 above and incorporate same by reference as though fully set forth herein.

49. The aforesaid acts and omissions of Defendant STATE FARM were done willful, wanton and/or grossly reckless and negligent in manner totally disregarding the interests and rights of Plaintiff, and Defendant STATE FARM is therefore liable to Plaintiff for punitive damages in an amount to be shown at trial.

WHEREFORE, upon a hearing hereof, Plaintiff prays that judgment be entered in his favor, and against said Defendants, and each of them, as follows:

1. Damages for failure to provide benefits under the no-fault Automobile Insurance Package Policy in an amount to be determined at the time of trial plus pre and post-judgment interest;

2. General damages for mental and emotional distress and special, consequential, compensatory, and treble damages in amounts to be shown at trial;

3. Punitive and exemplary damages in an amount appropriate to punish or set an example of Defendants;

4. For costs of suit incurred herein; and,

5. For such other and further relief as to which the Court deems just and proper, and to which Plaintiff shall be entitled pursuant to Rule 54 (c) of the *Hawaii Rules of Civil Procedure*.

DATED: Wailuku, Maui, Hawaii November 7, 1995.

/s/ Gerald T. Michaud
Gerald T. Michaud,
Appearing In Propria Persona

APPENDIX F

McCORRISTON MIHO MILLER MUKAI

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ROBERT YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH AND MONIQUE CATCOTT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ROBERT YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH AND MONIQUE CATCOTT; JOHN DOES 1-10; JANE DOES 1-10; PARTNERSHIP DOES 1-10; GOVERNMENTAL ENTITY DOES 1-10, inclusive, Defendants.	CIVIL NO. 96-00155 SPK DEFENDANTS' NOTICE OF REMOVAL; VERIFICATION; EXHIBIT "A"; CERTIFICATE OF SERVICE

DEFENDANTS' NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

1. This Notice of Removal is made pursuant to 28 U.S.C. §§ 1441 and 1446.

2. Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("STATE FARM"), Movant herein, is and was at all times relevant hereto, including without limitation the date on which Plaintiff filed the instant Complaint, a Company organized and existing under the laws of the State of Illinois, with its principal place of business in Bloomington, Illinois.

3. Upon information and belief, Plaintiff Gerald T. Michaud ("Plaintiff") is and was at all times relevant hereto, including without limitation the date on which Plaintiff filed the instant Complaint and the date on which this Notice of Removal is filed, a citizen of the State of Hawaii.

4. On or about November 7, 1995, Plaintiff filed a Complaint in Civil No. 95-0844(1) in the Circuit Court of the Second Circuit, State of Hawaii, against Defendants claiming, *inter alia*, that Defendants tortiously and in bad faith breached an insurance contract with Plaintiff.

5. Upon information and belief, the Complaint was mailed to a State Farm office in Westlake, California on November 9, 1995, and was received on November 13, 1995.

6. On or about November 30, 1995, Defendants filed an Answer to Plaintiffs' Complaint in the Circuit Court of the Second Circuit, State of Hawaii.

7. On January 17, 1996, Defendants State Farm Mutual Automobile Insurance Company, Robert Yoshino, Scott A. Gilmore, Karen Perreira, Frances Yost, A. Don Smith, and Monique Catcott filed a Motion to Dismiss Complaint against Robert Yoshino, Scott A. Gilmore, Karen Perreira, Frances Yost, A. Don Smith, and Monique Catcott with Prejudice ("Motion to Dismiss Individual Defendants").

8. The Motion to Dismiss Individual Defendants was heard on February 13, 1996 before the Honorable E. John McConnell, Judge of the Second Circuit Court, State of Hawaii. After considering the submissions and oral argument, Judge McConnell *granted* Defendants' Motion to Dismiss with Prejudice, finding that Plaintiff's Complaint failed to state a cause of action against individual Defendants Robert Yoshino, Scott A. Gilmore, Karen Perreira, Frances Yost, A. Don Smith, and Monique Catcott.

9. Judge McConnell's decision confirmed that individual Defendants Robert Yoshino, Scott A. Gilmore, Karen Perreira, Frances Yost, A. Don Smith, and Monique Catcott were improperly joined with State Farm as Defendants in Civil No. 950844(1). See *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

10. There is original jurisdiction in the United States District Court for the District of Hawaii under 28 U.S.C. § 1332 (diversity of citizenship) because fraudulently joined defendants, as defined in *McCabe v. General Foods*, supra, do not destroy diversity jurisdiction.

11. As set forth in the Complaint, Plaintiff seeks damages for general, special, consequential, compensatory, treble, and punitive damages, as well as attorneys

fees, costs, and pre- and post-judgment interest. Therefore, based on the amount and type of damages sought, the attorneys' fees involved, and the insurance benefits at issue, the amount in controversy exceeds $50,000.

12. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the process, pleadings, and orders served upon Defendants in the Circuit Court of the Second Circuit, State of Hawaii, are appended hereto as Exhibit "A". Pursuant to 28 U.S.C. § 1447(b), Movant is prepared to file with the Clerk of the United States District Court for the District of Hawaii copies of all records and proceedings from the State court action.

WHEREFORE, Movant prays that the above-entitled action be removed from the Circuit Court of the Second Circuit, State of Hawaii, to the United States District Court for the District of Hawaii.

DATED: Honolulu, Hawaii, February 15, 1996.

/s/ Douglas K. Ushijima
RICHARD B. MILLER
LISA M. GINOZA
DOUGLAS K. USHIJIMA
Attorneys for Defendants

APPENDIX G

GERALD T. MICHAUD, Sui juris
P.O. Box 10236
Lahaina, Hawaii 96761
Telephone: (808)669-0887

In Propia Persona

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH AND MONIQUE CATCOTT; JOHN DOES 1-10; JANE DOES 1-10; PARTNERSHIP DOES 1-10; GOVERNMENTAL ENTITY DOES 1-10, inclusive, Defendants.	CIVIL NO. 96-00155 SPK PLAINTIFF GERALD T. MICHAUD'S NOTICE NOT TO CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE; EXHIBIT A; AFFIDAVIT OF GERALD T. MICHAUD

PLAINTIFF GERALD T. MICHAUD'S NOTICE NOT TO CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

TO: THE UNITED STATES DISTRICT COURT CLERK FOR THE DISTRICT OF HAWAII.

PLEASE TAKE NOTICE that Plaintiff Gerald T. Michaud does not waive any rights, nor consents to proceed

before a United States District Court for the District of Hawaii.

DATED: Lahaina, Hawaii, March 12, 1996.

/s/ Gerald T. Michaud
Gerald T. Michaud, Plaintiff

APPENDIX H

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM INSURANCE COMPANIES, et al., Defendants.	) CIVIL NO. 96-0155 SPK) ORDER TO SHOW CAUSE

ORDER TO SHOW CAUSE

On February 15, 1996, State Farm Insurance Companies et al. ("Defendants") removed this case from the Second Circuit Court, State of Hawaii. Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, a pretrial conference was set for May 13, 1996 at 8:30 a.m. Plaintiff failed to appear and failed to file a meeting of the parties statement as required by Local Rule 230-1(d).

IT IS HEREBY ORDERED that Plaintiff appear on June 4, 1996 at 9:00 a.m. to show cause, if any there be, why sanctions should not be imposed for failure to file a meeting of the parties statement and failure to appear. Plaintiff is warned that failure to respond will result in a dismissal of the case.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, May 15, 1996.

/s/ Francis I. Yamashita
Francis I. Yamashita

United States Magistrate
Judge

APPENDIX I

Gerald T. Michaud, Sui juris
P.O. Box 10236
Lahaina, Hawaii 96761
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In Propria Persona

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD Plaintiff, vs. STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT; JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive; CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive, Defendants.	CIVIL NO. 96-00155 SPK PLAINTIFF GERALD T. MICHAUD'S RESPONSE TO ORDER TO SHOW CAUSE; MEMORANDUM; AFFIDAVIT OF GERALD T. MICHAUD; CERTIFICATE OF SERVICE DATE: June 4, 1996 TIME: 9:00 a.m. JUDGE: Francis I. Yamashita

PLAINTIFF GERALD T. MICHAUD'S RESPONSE TO ORDER TO SHOW CAUSE

WITH ALL DUE RESPECT, Plaintiff Gerald T. Michaud is returning this Honorable Court's Order to Show

Cause WITHOUT DISHONOR. Plaintiff refutes the validity of Defendant State Farm Insurance Companies, et al ("State Farm") authority to Remove the above entitled suit. Plaintiff's only Remedy at Law regarding the aforementioned suit is found in the Uniform Commercial Code ("UCC"). Pursuant to UCC § 3-505, I demand that State Farm provide Plaintiff, and this Honorable Court the following information:

(a) *Reasonable identification* of the person(s) who has/have made said Removal determinations, including copies of the following:

(1) His/Her/Their Driver's License

(2) His/Her/Their Social Security Card

(3) His/Her/Their State Farm Identification Card

(b) *Exhibition of the instrument*, or agreement of Removal which Plaintiff knowingly, voluntarily and intentionally entered into with State Farm, which created the alleged liability contained in the above referenced presentment determinations of Order to Show Cause.

(c) State Farm's *"Implementing authority"* Granting State Farm the Power to Remove such suits ex parse. If State Farm is conducting this Removal for another; please include the names and titles of person(s) delegating State Farm such authority, back to the initial "Removal Order" issued by which Court. Also include any authority, within the law, that defines me as the "person" liable for not conforming to such an Order to Show Cause.

Plaintiff also requests that this Honorable Court mandate that Sate [sic] Farm produce the original Consent signed

by me under which this Court compels performance UCC § 1-203(3).

This Honorable Court is in possession of incomplete instruments UCC § 3-115. These alleged Removal documents do not Evidence;

1) The statute and *"implementing regulation"* for the aforesaid action,

2) Nor has this Honorable Court Evidence that it is a Holder in Due Course UCC § 3302, providing the statute and *"implementing regulation"* which gives this Court authority to send the above noted Order to Show Cause.

Therefore, this Honorable Court's Presentment is being returned by Plaintiff (with all due respect) Without Dishonor, since this Court has sent incomplete instruments UCC § 3-115 with which State Farm is trying to induce the above, by Fraud UCC § 3-305(2)(B) & (C) causing a violation.

State Farm's on going Failure to provide me, and this Court with the above requisites invalidates the Removal, and/or Order to Show Cause that this Honorable Court has made and/or *(word is unreadable)* UCC § 1-505(2).

State Farm, and this Honorable Court knew or should have known that there is no immunity for anybody when they deal in commercial paper under the Eric and Clearfield Doctrine, see F.R.C.P. Evidence 902 paragraph 9, but not limited to.

DATED: Lahaina, Hawaii, May 22, 1996.

Respectfully Submitted With Explicit Reservation of All Rights Without Prejudice U.C.C. § 1-207

/s/ Gerald T. Michaud
Gerald T. Michaud

PLEASE TAKE SPECIAL NOTICE

Your Honor, my use of (Without Prejudice U.C.C. 1-207) above my signature on this document indicates that I have exercised the "REMEDY" provided for me in the Uniform Commercial Code at Article L Section 207, whereby I might reserve my Common Law Right not to be bound by, nor compelled to perform under any contract, commercial agreement or bankruptcy that I have not entered into *KNOWINGLY, VOLUNTARILY,* and *INTENTIONALLY.* That reservation serves *NOTICE* upon all of the Administrative Agencies of government *NATIONAL, STATE & LOCAL,* that I do not, and will not accept the liability associated with the *"COMPELLED BENEFIT"* of any unrevealed contract, commercial agreement or bankruptcy. And that;

"An individual may be under no obligation to do a particular thing, and his failure to act creates no liability, but if he voluntarily attempts to act and do the particular thing, he comes under an implied obligation in respect to the manner in which he does it."

Guardian T & D Co. vs. Fisher 26 S. Ct. 186 at 188

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained

that he who purports to act for the government stays within the bounds of his authority." *Federal Crop Insurance vs. Merrill* 332 US 380 at 384

"If the doctrine of "stare decisis" has any meaning at all, it requires that the people in their everyday affairs be able to rely on our decisions, and not be needlessly penalized for such reliance." *US vs. Mason* 412 US 391 (1973)

"Because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be the law, are cunningly coerced into waiving their rights, due to ignorance." *U.S. vs. Minker* 350 U.S. 179 at 187

"Illegitimate and Unconstitutional practices get their first footing . . . by silent approaches and slight deviations from otherwise legal modes of procedure." *Boyd vs. United States* 116 US 616 at 635.

APPENDIX J

GERALD T. MICHAUD, Sui juris
P.O. Box 10236
Lahaina, Hawaii 96761
Telephone: (808) 669-0887

In Propria Persona

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM INS.; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, MONIQUE CATCOTT; JOHN DOES 1-10, inclusive; JANE DOES 1-10 inclusive; CORPORATION DOES 1-10; inclusive; PARTNERSHIP DOES 1-10 inclusive; GOVERNMENTAL ENTITY DOES, 1-10 inclusive, Defendants.	) CIVIL NO. 96-00155 SPK) PLAINTIFF GERALD T. MICHAUD'S DEMAND FOR PROOF OF JURISDICTION; CERTIFICATE OF SERVICE) DATE: June 4, 1996) TIME: 9:00 a.m.) JUDGE: Francis I. Yamashita

PLAINTIFF GERALD T. MICHAUD'S
DEMAND FOR PROOF OF JURISDICTION

COMES NOW Plaintiff Gerald T. Michaud (Plaintiff) averring that; On March 12, 1996, Plaintiff filed in the

above entitled court a Response to Defendant's Notice of Filing Notice of Removal, whereas Plaintiff made known that this Honorable Court does not have jurisdiction in respect to this instant matter. On March 14, 1996 Plaintiff filed in the above entitled court a Notice not to Consent to Proceed Before a United States Magistrate as per the voluntary Rule. That on March 19, 1996 Plaintiff's Response Notice was filed in the Circuit Court of the Second Circuit in the State of Hawaii. On April 24, 1996 Plaintiff filed a Scheduling Conference Statement within the above entitled court again challenging jurisdiction. On May 13, 1996 Plaintiff filed a Response in the above entitled court in regard to Defendant's Scheduling Conference Statement, whereas Plaintiff challenged jurisdiction once again. On May 15, 1996 the above entitled court dishonored all of Plaintiff's jurisdictional challenges, and Ordered Plaintiff to Show Cause, and to appear on April 4, 1996. With the threat of Dismissing this suit, remiss the jurisdictional issue previously raised, Plaintiff forthwith mailed a Response to the Order to Show Cause on May 22, 1996. This Honorable Court through negligence per se is attempting to coerce Plaintiff into its foreign jurisdiction.

Plaintiff avers that he has studied the law, and does not believe that he is a person under the jurisdiction of this Honorable Court, which is defined and limited by Article I § 8 Clause 17, and Amendment 11 § 1 of the Constitution for the United States of America. Plaintiff contends that:

> "It is a well established principle of law that all federal legislation applies only within the territorial Jurisdiction of the United States unless

> contrary intent appears." *Foley Brothers v. Filardo*, 336, U.S. 281 (1948)

It is a principle of law that, once challenged, the person asserting jurisdiction must prove that jurisdiction to exist as a matter of law: *Title 5 of the U.S. Codes* § 556 (d) states as follows:

> "When jurisdiction is challenged the burden of proof is on the government."

Also: Please take notice of the following cases:

McNutt v. G.M., 56 S. Ct. 789, 80 L. Ed. 1135

Griffin v. Matthews, 310 Supp. 341, 423, F. 2d 272

Basso v. U.P.L., 495 F. 2d 906

Thomson v. Gaskiel, 62 S. Ct. 673, 83 L. Ed. 111.

Your jurisdiction over Plaintiff is hereby challenged on the basis of the following Affidavit of Facts:

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

Plaintiff Gerald T. Michaud, being first duly sworn upon oath, deposes and states that:

(1) I am the individual Demanding Proof of Jurisdiction;

(2) I have personal knowledge of the facts as contained in this Demand, and Affidavit unless said facts are alleged upon information and belief, and in those instances I believe said facts to be true;

(3) I am a natural born Preamble Citizen of the Connecticut Republic. This is one of the 50

Republic sovereign states, and not a Territory over which the sovereignty of the United States extends;

(4) I am domiciled in the sovereign Hawai'i Republic. I do not reside in any Territory, Possession, Instrumentality or Enclave which is under the sovereignty of or subject to the jurisdiction of the United States;

(5) I am not a citizen of the United States (District of Columbia, Article I § 8 Clause 17 U.S. Const.) subject to its jurisdiction;

(6) I am not a federal government employee nor am I a corporation.

If this Honorable Court feels that it has jurisdiction over Plaintiff, please provide Plaintiff with the appropriate jurisdictional authority. If this Honorable Court cannot provide such authority, Plaintiff will respectfully expect an Order Remanding the instant matter back into the Circuit Court of the Second Circuit for the State of Hawaii where it by law rightfully belongs.

Further AFFIANT SAYETH naught.

DATED: Lahaina, Maui, Hawaii, May 24, 1996.

/s/ Gerald T. Michaud
Gerald T. Michaud, Plaintiff-Affiant

Subscribed and sworn to before
me this 24 day of May, 1996.

/s/ Marilyn Maulin
Notary Public, State of Hawaii

My commission expires: 6/29/96

APPENDIX K

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al., Defendants.	CIVIL NO. 96-0155 SPK ORDER DENYING PLAINTIFF'S DEMAND FOR PROOF OF JURISDICTION

Pursuant to Local Rule 220-2, the Court finds this matter suitable for disposition without hearing. After reviewing the motion, and other pleadings, the Court reads Plaintiff's Demand for Proof of Jurisdiction as a motion to remand for lack of subject matter jurisdiction which this court DENIES.

On November 7, 1995, Plaintiff Gerald L. Michaud, pro se, ("Plaintiff") filed a complaint in the Circuit Court of the Second Circuit, State of Hawaii, claiming that Defendants breached their insurance contract with Plaintiff in bad faith. Defendants filed their Answer on November 30, 1995.

Defendants later moved to dismiss the complaint against Defendants Robert Yoshino, Scott A. Gilmore, Karen Perreira, Frances Yost, A. Don Smith, and Monique Catcott with Prejudice. Judge E. John McConnell, Judge of the Second Circuit Court, State of Hawaii, granted the motion and found that Plaintiff's Complaint failed to

state a cause of action against the above-named individual Defendants. The only remaining Defendant was State Farm.

Defendants filed their Notice of Removal on February 15, 1996, claiming original jurisdiction under diversity of citizenship. 28 U.S.C. § 1332. On May 28, 1996, Plaintiff filed a "Demand for Proof of Jurisdiction" in which he claims that this court lacks jurisdiction. The court interprets this as a Motion to Remand for Lack of Subject Matter Jurisdiction. Defendant removed this action from state court, pursuant to 28 U.S.C. § 1441. Defendant, in its petition for removal, stated that this court has jurisdiction based on diversity of citizenship in that the parties are citizens of different states and the amount in controversy exceeds $50,000. 28 U.S.C. § 1332.

There is no dispute that Defendant is an Illinois corporation, authorized to do business in Hawaii. Upon reviewing the complaint in this action, however, it is unclear what amount of damages Plaintiff is claiming. In diversity cases, where the amount in controversy is in doubt, the Supreme Court has drawn a sharp distinction between original jurisdiction and removal jurisdiction:

> There is a strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court or that the parties have colluded to that end.

Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992), citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-90 (1938).

In a case where the amount in controversy was not made clear by the plaintiff, the defendant "bears the

burden of actually proving the facts to support jurisdiction, including the jurisdictional amount." *Gaus* at 566-67. It is not sufficient for the defendant to simply allege that "the matter in current controversy . . . exceeds the sum of $50,000." *Id.* at 567. The defendant has the burden of setting forth, in the removal petition, the underlying facts supporting its assertion that the amount in controversy exceeds $50,000. *Id.*

Defendant has met its burden by submitting the Declaration of Yvonne Saronitman, Claims Superintendent and custodian of records for Defendant State Farm. She attaches as an exhibit to her Declaration, a notarized certificate of coverages for Plaintiff's policy with Defendant. The certificate indicates that the coverages and limits for Plaintiff's policy (which is at issue in this action) well exceed $50,000. Therefore, Defendant has confirmed that the amount in controversy requirement has been met.

Because this court has original jurisdiction under diversity of citizenship, Defendant properly removed the action to this court. 28 U.S.C. §§ 1332 and 1441. Plaintiff's Demand for Proof of Jurisdiction is therefore DENIED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 5, 1996.

/s/ Samuel P. King
SAMUEL P. KING
United States District Judge

MICHAUD v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; CV. NO. 96-00155 SPK; ORDER DENYING PLAINTIFF'S DEMAND FOR PROOF OF JURISDICTION

APPENDIX L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al., Defendants.	CIVIL NO. 96-01155 SPK FINDINGS AND RECOMMENDATION

FINDINGS AND RECOMMENDATION

On February 15, 1996, State Farm Insurance Companies, et al. ("Defendants") removed this case from the Second Circuit Court, State of Hawaii. Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, a pretrial conference was set for May 13, 1996 at 8:30 a.m. Plaintiff failed to appear and failed to file a meeting of the parties statement as required by Local Rule 230-l(d). On May 15, 1996, Plaintiff was ordered to appear on June 4, 1996 at 9:00 a.m. to show cause, if any there be, why sanctions should not be imposed for failure to file a meeting of the parties statement and for failure to appear. Plaintiff was warned that failure to respond would result in a dismissal of the case.

On April 24, 1996, this court was copied with a letter from Plaintiff to Defendant. Plaintiff stated in his letter that he would not participate in a conference with Defendant until the issue of the "alleged fraud" gets resolved.

On May 23, 1996, Plaintiff filed a response to this court's order to show cause. In his response, Plaintiff states that he "refutes the validity of Defendant's authority to remove this suit from state court." On June 4, 1996, Plaintiff failed to appear at the order to show cause hearing. To date, this court has not been able to issue a trial schedule in this case due to Plaintiff's failure to participate in a Rule 16 scheduling conference.

DISCUSSION

Accordingly, on May 15, 1996, Plaintiff was ordered to show cause, if any there be, why sanctions should not be imposed failure to file a report of the parties planned meeting and for failure to appear. Plaintiff was warned in the order that failure to respond may result in the dismissal of the case. To date, Plaintiff has not provided this court with an adequate response to the order to show cause and Plaintiff failed to appear for the order to show cause hearing.

Failure to comply with court orders is not taken lightly. Federal Rules of Civil Procedure 16(f) provides, in pertinent part:

> If a party or party's attorney fails to obey a scheduling or pretrial order, . . . the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D).

Rule 37(b)(2)(C) provides that if a party fails to obey a court order, the court may "dismiss[ ] the action or proceeding or any part thereof." Fed. R. Civ. P. 37(b)(2)(C).

Plaintiff failed to comply with the order to show cause filed on June 19, 1996. This court finds that Plaintiff's response to the order to show cause dated May 23, 1996 is inadequate. Plaintiff's response fails to articulate a legitimate reason for not complying with court orders. In his response, Plaintiff states that he "refutes the validity of Defendant's authority to remove this suit from state court." This court notes that the Honorable Samuel P. King on July 5, 1996, held that his court has original jurisdiction under diversity of citizenship, thus, Defendants have properly removed this action to this court. Nevertheless, this court finds that whether Plaintiff agreed with the removal or not, he still had an obligation to comply with the Federal Rules of Civil Procedure and the Local Rules for this district. Plaintiff's failure to appear at that the order to show cause hearing is inexcusable. Plaintiff was ordered to appear and was warned that failure to do so would result in a dismissal of his case.

Accordingly, this court RECOMMENDS that Plaintiffs' complaint be dismissed without prejudice for failure to obey a court order.

IT IS SO FOUND AND RECOMMENDED.

Dated: Honolulu, Hawaii, September 3, 1996.

/s/ Francis I. Yamashita
Francis I. Yamashita
United State Magistrate Judge

MICHAUD V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL.; CIVIL NO. 96-00155 SPK; FINDINGS AND RECOMMENDATION

APPENDIX M

Gerald T. Michaud, Sui juris
P.O. Box 10236
Lahaina, Hawaii 96761
Telephone: (808) 669-0887
Citizen In Party

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GERALD T. MICHAUD Citizen In Party, Plaintiff, vs. STATE FARM INSURANCE COMPANIES; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH; MONIQUE CATCOTT; ET AL, Defendants.	) CIVIL NO. 96 00155 SPK) (Non-Motor Vehicle Tort)) PURSUANT TO F.R.C.P. RULE 38(a) MOTION: UNDER THE JURISDICTION OF THE AMERICAN FLAG OF PEACE [TITLE 4 U.S.C. § 1] OF THE UNITED STATES OF AMERICA. NO JURISDICTION OF ADMIRALTY OR MARITIME WILL BE ALLOWED IN THE JURISDICTION OF THIS CASE – PURSUANT TO ARMY REG. 840-10 CHAPTER 2-1(a)(b); CERTIFICATE OF SERVICE) INCORPORATED CASE NO. 96-00155 SPK

NOTICE OF REFUSAL

Plaintiff Swears to tell the truth and has first hand knowledge of the facts.

ABBREVIATIONS

F.R.C.P.	=	Federal Rules of Civil Procedures
A.U.S.C.	=	Amendment United States Constitution
A.H. S. C.	=	Article Hawaii State Constitution
U.C.C.	=	Uniform Commercial Code
U.S.C.	=	United States Codes
U.S.C.A.	=	United States Codes Annotated
H.R.S.	=	Hawaii Revised Statutes
INC. CASE NO.	=	Incorporation Case Number

Title 18 Chapter 79 U.S.C.A. 1621 = "Perjury of Oath of Office." Person is replaced in all statue definitions by Citizen In Party

RESPONSE

1. Plaintiff is REFUSING the brief titled: "DEFENDANTS STATE FARM INSURANCE COMPANIES, ROBERT (BOB) YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH and MONIQUE CATCOTT'S ANSWER TO THE COMPLAINT FILED NOVEMBER 7, 1995."

2. Plaintiff is REFUSING the brief titled: "DEFENDANTS STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ROBERT YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH and MONIQUE CATCOTT'S MOTION TO DISMISS COMPLAINT AGAINST ROBERT YOSHINO,

SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH and MONIQUE CATCOTT WITH PREJUDICE" FILED ON JANUARY 17, 1996.

3. Plaintiff is REFUSING the brief titled: "DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COMPLAINT AGAINST ROBERT YOSHINO, SCOTT A. GILMORE, KAREN PERREIRA, FRANCES YOST, A. DON SMITH and MONIQUE CATCOTT WITH PREJUDICE" FILED ON FEBRUARY 12, 1996

4. Plaintiff is REFUSING the brief titled: "DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF GERALD T. MICHAUD'S (1) MOTION TO INTERVENE, (2) MOTION FOR A STAY, AND (3) MOTION FOR A RULING FILED ON MARCH 18, 1996.

5. Plaintiff is REFUSING the ORDER titled: ORDER DENYING PLAINTIFF GERALD T. MICHAUD'S (1) MOTION TO INTERVENE, (2) MOTION FOR A STAY, AND (3) MOTION FOR A RULING" FILED ON APRIL 1, 1996.

6. Plaintiff is REFUSING the NOTICE titled: "NOTICE OF ENTRY OF ORDER" FILED ON APRIL 4, 1996.

7. Plaintiff is REFUSING the NOTICE titled: "NOTICE OF REMOVAL" FILED ON FEBRUARY 15, 1996.

8. Plaintiff is REFUSING the NOTICE titled: "DEFENDANTS' NOTICE OF FILING NOTICE OF REMOVAL" FILED ON FEBRUARY 20, 1996.

9. Plaintiff is REFUSING the ORDER titled: "ORDER SETTING RULE 16 SCHEDULING CONFERENCE" FILED ON FEBRUARY 15, 1996.

10. Plaintiff is REFUSING the BRIEF titled: "DEFENDANT'S SCHEDULING CONFERENCE STATEMENT" FILED ON MAY 6, 1996.

11. Plaintiff is REFUSING the ORDER titled: "ORDER TO SHOW CAUSE" FILED ON MAY 15, 1996.

12. Plaintiff is REFUSING the BRIEF titled: "STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MEMORANDUM IN RESPONSE TO PLAINTIFF GERALD F. MICHAUD'S DEMAND FOR PROOF OF JURISDICTION" FILED ON JUNE 14, 1996.

13. Plaintiff is REFUSING the BRIEF titled: "SUBMISSION OF DECLARATION OF YVONNE SARONITMAN" FILED ON JUNE 18, 1996.

14. Plaintiff is REFUSING the ORDER titled: "ORDER DENYING PLAINTIFF'S DEMAND FOR PROOF OF JURISDICTION" FILED ON JULY 5, 1996.

15. Plaintiff is REFUSING the BRIEF titled: "FINDINGS AND RECOMMENDATION" FILED ON SEPTEMBER 3, 1996.

16. Plaintiffs refusing the briefs titled above (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) & (15) pursuant to Title 42 U.S.C. 1986 for knowledge and neglect under (F.R.C.P. 9(b)) "FRAUD", (once a fraud always a fraud), (F.R.C.P. 10(a)) "NAME OF PARTY", Note (Plaintiffs not a dead party), and (F.R.C.P. 12(b)(6)) DEFENDANT'S fail to state a claim, (F.R.C.P. 12(b)(7)) fails to join with COMMON LAW (7th A.U.S.C.) pursuant to F.R.C.P. Rule 38(a).

17. Plaintiffs REFUSING FOR "FRAUD" (F.R.C.P. 9(b)) the term of "Pro Se", "Pro Per" or "In Propria Persona."

Plaintiffs not an attorney. Plaintiffs not acting as an attorney.

18. Plaintiffs a "Citizen In Party" and the Movant.

19. The DEFENDANT JUDGE and the DEFENDANT ATTORNEYS in the above Action, have caused the Plaintiff, with the "KNOWLEDGE OF THE LAW" under (Title 42 U.S.C.A. 1986) with a "DEPRIVATION" of U.S. Constitutional Rights under the "COLOR OF LAW", in and for, (Title 18 U.S.C.A. § 242) "DEPRIVATION OF RIGHTS" with "INTENT", and "EXTORTION" of U.S. Constitutional Rights under (Title 18 U.S.C.A. § 872), and (Title 18 U.S.C.A. § 241) "CONSPIRACY AGAINST RIGHTS". DEFENDANTS titled above together in their "SILENCE " causing "NEGLECT" (Title 42 U.S.C. § 1986), while witnessing each other in turn, while at trial, as against the Plaintiff in violation F.R.C.P. 38(a) of a guaranteed (7th A.U.S.C.) common law trial, causing (5th A.U.S.C.) due process.

20. The DEFENDANTS above, under "OATH" as officers of the court, swear an "OATH", to uphold the U.S. Constitution of the United States of America. That "OATH OF OFFICE" is accused by the plaintiff, of "PERJURY" (Title 18 U.S.C.A. § 1621), and "FALSE SWEARING": H.R.S. §§ 710-1060, 710-1062.

21. The court did not have a (Title 4 U.S.C. § 1) American Flag of Peace in the sanctuary of the bar, the same Flag the attorneys and Judge swore an "OATH" and signed an "AFFIRMATION" to certify the authority of the court.

22. The remedy lies in (F.R.C.P. 26(e)(2)) "DISCOVERY" of the law and (Title 42 U.S.C.A. § 1986) for the "KNOWLEDGE" of the law, followed by (F.R.C.P. 9(b)) "FRAUD", then (Title 18 U.S.C.A. § 242) "DEPRIVATION OF RIGHTS UNDER THE COLOR OF LAW": WHOEVER UNDER COLOR OF ANY LAW, STATUTE, ORDINANCE, REGULATION, OR CUSTOM, WILLFULLY SUBJECTS ANY "CITIZEN IN PARTY" IN ANY STATE, TERRITORY, OR DISTRICT TO THE "DEPRIVATION" OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE U.S. CONSTITUTION OR LAWS OF THE UNITED STATES, OR TO DIFFERENT PUNISHMENTS, PAINS, OR BY REASON OF CITIZEN IN PARTY'S COLOR OR RACE THAN ARE PRESCRIBED FOR THE PUNISHMENT OF "CITIZENS IN PARTY", SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN TEN YEARS OR BOTH.

23. The "NECESSARY ELEMENT", being the "NEGLECT" of the jurisdiction of the flag (Title 4 U.S.C. § 1) in the sanctuary of the bar. The failure of the court to place an American flag of peace (Title 4 U.S.C. § 1) in the court for the jurisdiction of a common law trial, shall be preserved by the United States Constitution, Hawaii State Constitution (7th A.U.S.C., 1 § 13 A.H.S.C.) and by the (5th A.U.S.C., 1 § 5 A.H.S.C.) "DUE PROCESS OF THE LAW" for a common law "OATH AND AFFIRMATION", that the judges and attorneys are sworn to uphold. This "KNOWLEDGE" of the "DEPRIVATION OF RIGHTS" under the color of law, is the necessary element to "ACCUSE" the officer of the court of "PERJURY OF OATH" of office. The "DEPRIVATION", with intent, by

the officers of the court, as against the Plaintiff, supports the definition of "PERJURY" under (Title 18 Chapter 79 U.S.C.A. § 1621).

24. Plaintiff is the moving "CITIZEN IN PARTY", to the original motion for a jury trial before this court, to this action.

25. The sovereignty that the Plaintiff is declaring is under "THE AMERICAN FLAG OF PEACE" (Title 4 U.S.C. § 1) of "THE UNITED STATES OF AMERICA".

26. If Plaintiff is "FRAUDED" of Plaintiffs rights, under the United States Constitution, Hawaii State Constitution to a (7th A.U.S.C., 1 § 13 A.H.S.C.) common law trial by jury, Plaintiff will proceed forward under (Title 18 U.S.C.A. § 242) "DEPRIVATION" of rights under color of law.

27. The time allowed for trial in federal court is growing near. The Plaintiff now demands declaratory judgment (F.R.C.P. 56) on the original pleadings.

28. (Example): In the same way as a lifeguard sits in his chair and watches as a "WITNESS", the child drown and not stop or correct the "INJURY", that being, the "WITNESS" will cause injury or death. The lifeguard in his official capacity can save the child and will be granted immunity from any complaints of that saving. But let that same lifeguard not do his job, and be a witness, then you have your (Title 42 U.S.C.A. § 1986, and Title 42 § 1983) injury. (Rodney King v. Cal. Highway Patrol). Those officers were found guilty as "WITNESSES" for not stopping or correcting the U.S. Constitutional injury under (Title 42

U.S.C.A. §§ 1986, 1985, & 1983), (Title 18 U.S.C.A. §§ 242, 241, 872, & 1621).

29. (Title 18 U.S.C.A. § 242) Deprivation of Citizens rights under color of law, "POLICY AND CUSTOM" (Title 42 U.S.C.A. § 1983) at notes 319 and 337 explain the "INTENT" to the violation of rights, "BEFORE THE FACTS" and by the court and officer of the court.

30. Plaintiff will not traverse with statements of fraud by the Defendants, or any of the subjects that dealt with the original "FRAUD" or give the fraud credibility. Once a "FRAUD" always a "FRAUD". The Grand Jury will learn of the "FRAUD", how it was constructed, the players, the remedies of law, the war powers act, sovereignty of nations act, use of flags for jurisdiction, and the remedies that our forefathers built into our laws to protect against corruption in government.

31. The question before the people: "IS THE OATH OF OFFICE FOR THE JUDGES AND ATTORNEYS BEING UPHELD?"

32. Plaintiffs prayer for a (7th A.U.S.C., & 1 § 13 A.H.S.C.) common law trial "SHALL BE PRESERVED" and the judges and attorneys swear an "OATH AND AFFIRMATION", to support the United States of America Constitution and the Constitution of the State of Hawaii.

DATED: Lahaina, Hawaii, September 17, 1996.

/s/ Gerald T. Michaud
Gerald T. Michaud,
Citizen In Party, Plaintiff

APPENDIX N

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

95 Seventh Street, P. O. Box 193939

San Francisco, CA 94119-3939

May 1, 1998

CA No. 96-17212 Michaud v. State Farm Ins.

97-15387 Michaud v. State Farm Ins.

To All Parties:

The United States Court of Appeals for the Ninth Circuit is considering submission of your case without oral argument. You have ten (10) days from the date of this letter to present a statement setting forth the reasons why oral argument should be heard in this case. See 9th Cir. R. 34-4. Please send an original and three (3) copies of your statement to Clerk's Office in San Francisco, and show proof of service to opposing counsel.

The court welcomes additional citations, without argument, of relevant decisions rendered since the filing of a party's last brief. See Fed. R. App. P. 28(j). Send an original and three (3) legible copies to the Clerk's Office, on letter size paper, with proof of service on all parties.

Very truly yours,

Cathy A. Catterson

Clerk of Court

By: Mike Wheeler
Deputy Clerk